

1 services, including diversion, crisis intervention, counseling,
2 and emergency housing services.

3 The purpose of this chapter is to protect a child from
4 further victimization after the child is discovered to be a
5 sexually exploited child by ensuring that a child protective
6 response, not a criminal justice response, is in place. This is
7 accomplished by granting exemption from certain prosecution to
8 sexually exploited children and creating programs and services
9 to meet their specific needs. It should be the priority of the
10 department of human services to establish family reunification
11 where possible, without conflict with the child's health and
12 safety. In determining the need for and capacity for services
13 that may be provided under this chapter, the department of human
14 services shall recognize that sexually exploited children have
15 separate and distinct service needs according to gender, and
16 appropriate services shall be made available while ensuring that
17 an appropriate continuum of services exist.

18 **§ -2 Definitions.** As used in this chapter, unless the
19 context requires otherwise:

20 "Child" means a person who is less than eighteen years of
21 age.

22 "Department" means the department of human services.



1 "Safe house" means a residential facility operated by an
2 authorized agency, including a nonprofit agency, with experience
3 in providing services to sexually exploited children and
4 approved by the department to provide shelter for sexually
5 exploited children.

6 "Sexually exploited child" means any person under the age
7 of eighteen who has been subject to sexual exploitation because
8 the person:

- 9 (1) Is a victim of the crime of promoting prostitution in
10 the first degree under section 712-1202;
- 11 (2) Is a victim of the crime of sex trafficking of
12 children under title 18 United States Code section
13 1591; or
- 14 (3) Engages in any act under section 712-1200, 712-1206,
15 712-1207(1)(a), or 712-1207(2)(a), and is granted
16 exemption pursuant to those sections.

17 **§ -3 Victim services program for sexually exploited**
18 **children established.** (a) The department shall develop a
19 victim services program to address the needs of sexually
20 exploited children and minors at risk of becoming sexually
21 exploited.

22 (b) The victim services program shall:



- 1 (1) Provide for the child welfare services needs of
2 sexually exploited children, including but not limited
3 to services for sexually exploited children at the
4 time the child is taken into custody by law
5 enforcement or is identified by the department as a
6 sexually exploited child for the duration of any legal
7 or administrative proceeding in which the child is the
8 complaining witness or the subject child;
- 9 (2) Reunite a child with the child's family, if it is in
10 the best interest of the child, or place the child in
11 foster care; and
- 12 (3) Provide appropriate services to a child reasonably
13 believed to be a sexually exploited child in order to
14 safeguard the child's welfare.
- 15 (c) The department shall:
- 16 (1) Coordinate with law enforcement agencies, the county
17 prosecutors' offices, the child and adolescent mental
18 health division of the department of health, child
19 protection workers of the department of human
20 services, and human trafficking service providers to
21 implement the victim services program established
22 under this section;



1 (2) Provide training and educational materials to its
2 employees regarding sex trafficking of children and
3 sexually exploited children;

4 (3) Develop a public awareness campaign regarding sex
5 trafficking of children; and

6 (4) Conduct outreach to youth identified as being at risk
7 for sexual exploitation.

8 For the purposes of this subsection, "human trafficking
9 service providers" means providers of services who help victims
10 of human trafficking.

11 (d) The services provided under the victim services
12 program, whether accessed voluntarily, through a court
13 proceeding, or through a referral, which may be made by any
14 person, shall be available to all sexually exploited children.

15 (e) The department shall submit a report to the
16 legislature, no later than twenty days prior to the convening of
17 each regular session, that:

18 (1) Details the implementation of the victim services
19 program for sexually exploited children; and

20 (2) Includes findings, recommendations, additional
21 appropriation requests, and proposed legislation, if
22 any.



1 **§ -4 Temporary care and custody of sexually exploited**
2 **children.** (a) The department shall develop a protocol for the
3 interplay between the exemption provisions for sexually
4 exploited children established by this chapter and other
5 existing child protection statutes.

6 (b) Sexually exploited children may be taken into custody
7 by a law enforcement agent and may be:

8 (1) Subject to no cost emergency shelter and related
9 services provided by the department of human services
10 pursuant to section 346-17.6; provided that the child
11 communicates informed consent to the rules and
12 requirements of the shelter and services; or

13 (2) Returned to the child's parents; provided that, in the
14 judgment of the law enforcement agent, it is safe to
15 do so without jeopardizing the health or safety of the
16 child."

17 SECTION 2. Section 321-1.3, Hawaii Revised Statutes, is
18 amended by amending subsection (d) to read as follows:

19 "(d) The department of health shall submit an annual
20 report to the legislature no later than twenty days prior to the
21 convening of each regular session providing the following:



- 1 (1) An accounting of the receipts of, and expenditures
2 from, the special fund; and
- 3 (2) Recommendations on how to improve services for victims
4 of domestic violence, ~~and~~ sexual assault[-],
5 promoting prostitution in the first degree as defined
6 by chapter 712-1202, or sex-trafficking as defined in
7 title 22 United States Code, section 7102, as
8 amended."

9 SECTION 3. Section 712-1200, Hawaii Revised Statutes, is
10 amended to read as follows

- 11 "**§712-1200 Prostitution.** (1) A person commits the
12 offense of prostitution if the person:
- 13 (a) Engages in, or agrees or offers to engage in, sexual
14 conduct with another person for a fee; or
- 15 (b) Pays, agrees to pay, or offers to pay a fee to another
16 to engage in sexual conduct.
- 17 (2) As used in subsection (1), "sexual conduct" means
18 "sexual penetration," "deviate sexual intercourse," or "sexual
19 contact," as those terms are defined in section 707-700.
- 20 (3) Prostitution is a petty misdemeanor.
- 21 (4) A person convicted of committing the offense of
22 prostitution shall be sentenced as follows:



- 1 (a) For the first offense, when the court has not deferred
2 further proceedings pursuant to chapter 853, a
3 mandatory fine of \$500 and the person may be sentenced
4 to a term of imprisonment of not more than thirty days
5 or probation; provided that in the event the convicted
6 person defaults in payment of the \$500 fine, and the
7 default was not contumacious, the court may sentence
8 the person to perform services for the community as
9 authorized by section 706-605(1).
- 10 (b) For any subsequent offense, a mandatory fine of \$500
11 and a term of imprisonment of thirty days or
12 probation, without possibility of deferral of further
13 proceedings pursuant to chapter 853 and without
14 possibility of suspension of sentence.
- 15 (c) For the purpose of this subsection, if the court has
16 deferred further proceedings pursuant to chapter 853,
17 and notwithstanding any provision of chapter 853 to
18 the contrary, the defendant shall not be eligible to
19 apply for expungement pursuant to section 831-3.2
20 until four years following discharge. A plea
21 previously entered by a defendant under section 853-1
22 for a violation of this section shall be considered a



1 prior offense. When the court has ordered a sentence
2 of probation, the court may impose as a condition of
3 probation that the defendant complete a course of
4 prostitution intervention classes; provided that the
5 court may only impose such condition for one term of
6 probation.

7 (5) This section shall not apply to any member of a police
8 department, a sheriff, or a law enforcement officer acting in
9 the course and scope of duties.

10 (6) If it is determined, after a reasonable detention for
11 investigative purposes, that a person suspected of or charged
12 with prostitution was less than eighteen years of age at the
13 time the offense was allegedly committed, that person shall be
14 not be prosecuted under this section, and shall be subject to
15 the safe harbor provisions of chapter . Exemption from
16 prosecution under this section shall not apply to patrons of
17 prostitution or persons who procure or solicit patrons for
18 prostitution."

19 SECTION 4. Section 712-1206, Hawaii Revised Statutes, is
20 amended to read as follows:

21 " **[+]§712-1206[+]** **Loitering for the purpose of engaging in**
22 **or advancing prostitution.** (1) For the purposes of this



1 section, "public place" means any street, sidewalk, bridge,
2 alley or alleyway, plaza, park, driveway, parking lot or
3 transportation facility or the doorways and entrance ways to any
4 building which fronts on any of the aforesaid places, or a motor
5 vehicle in or on any such place.

6 (2) Any person who remains or wanders about in a public
7 place and repeatedly beckons to or repeatedly stops, or
8 repeatedly attempts to stop, or repeatedly attempts to engage
9 passers-by in conversation, or repeatedly stops or attempts to
10 stop motor vehicles, or repeatedly interferes with the free
11 passage of other persons for the purpose of committing the crime
12 of prostitution as that term is defined in section 712-1200,
13 shall be guilty of a violation.

14 (3) Any person who remains or wanders about in a public
15 place and repeatedly beckons to, or repeatedly stops, or
16 repeatedly attempts to engage passers-by in conversation, or
17 repeatedly stops or attempts to stop motor vehicles, or
18 repeatedly interferes with the free passage of other persons for
19 the purpose of committing the crime of advancing prostitution as
20 that term is defined in section 712-1201(1) is guilty of a petty
21 misdemeanor.



1 (4) If it is determined, after a reasonable detention for
2 investigative purposes, that a person suspected of or charged
3 with a violation under subsection (2) was less than eighteen
4 years of age at the time the offense of loitering for the
5 purpose of engaging in prostitution was allegedly committed,
6 that person shall not be prosecuted under this section, and
7 shall be subject to the safe harbor provisions of chapter .
8 Exemption from prosecution under this section shall not apply to
9 patrons of prostitution or persons who procure or solicit
10 patrons for prostitution."

11 SECTION 5. Section 712-1207, Hawaii Revised Statutes, is
12 amended to read as follows:

13 "**§712-1207 Street solicitation of prostitution; designated**
14 **areas.** (1) It shall be unlawful for any person within the

15 boundaries of Waikiki and while on any public property to:

- 16 (a) Offer or agree to engage in sexual conduct with
- 17 another person in return for a fee; or
- 18 (b) Pay, agree to pay, or offer to pay a fee to another
- 19 person to engage in sexual conduct.

20 (2) It shall be unlawful for any person within the
21 boundaries of other areas in this State designated by county



1 ordinance pursuant to subsection (3), and while on any public
2 property to:

3 (a) Offer or agree to engage in sexual conduct with
4 another person in return for a fee; or

5 (b) Pay, agree to pay, or offer to pay a fee to another
6 person to engage in sexual conduct.

7 (3) Upon a recommendation of the chief of police of a
8 county, that county may enact an ordinance that:

9 (a) Designates areas, each no larger than three square
10 miles, as zones of significant prostitution-related
11 activity that is detrimental to the health, safety, or
12 welfare of the general public; or

13 (b) Alters the boundaries of any existing area under
14 paragraph (a);

15 provided that not more than four areas may be designated within
16 the State.

17 (4) Notwithstanding any law to the contrary, any person
18 violating this section shall be guilty of a petty misdemeanor
19 and shall be sentenced to a mandatory term of thirty days
20 imprisonment. The term of imprisonment shall be imposed
21 immediately, regardless of whether the defendant appeals the
22 conviction, except as provided in subsection (5).



1 (5) As an option to the mandatory term of thirty days
2 imprisonment, if the court finds the option is warranted based
3 upon the defendant's record, the court may place the defendant
4 on probation for a period not to exceed six months, subject to
5 the mandatory condition that the defendant observe geographic
6 restrictions that prohibit the defendant from entering or
7 remaining on public property, in Waikiki and other areas in the
8 State designated by county ordinance during the hours from
9 6 p.m. to 6 a.m. Upon any violation of the geographic
10 restrictions by the defendant, the court, after hearing, shall
11 revoke the defendant's probation and immediately impose the
12 mandatory thirty-day term of imprisonment. Nothing contained in
13 this subsection shall be construed as prohibiting the imposition
14 of stricter geographic restrictions under section 706-624(2)(h).

15 (6) Any person charged under this section may be admitted to
16 bail, pursuant to section 804-4, subject to the mandatory
17 condition that the person observe geographic restrictions that
18 prohibit the defendant from entering or remaining on public
19 property, in Waikiki and other areas in the State designated by
20 county ordinance during the hours from 6 p.m. to 6 a.m.

21 Notwithstanding any other provision of law to the contrary, any
22 person who violates these bail restrictions shall have the



1 person's bail revoked after hearing and shall be imprisoned
2 forthwith. Nothing contained in this subsection shall be
3 construed as prohibiting the imposition of stricter geographic
4 restrictions under section 804-7.1.

5 (7) Notwithstanding any other law to the contrary, a police
6 officer, without warrant, may arrest any person when the officer
7 has probable cause to believe that the person has committed a
8 violation of subsection (5) or (6), and the person shall be
9 detained, without bail, until the hearing under the appropriate
10 subsection can be held, which hearing shall be held as soon as
11 reasonably practicable.

12 (8) If it is determined, after a reasonable detention for
13 investigative purposes, that a person suspected of or charged
14 with a violation of subsection (1)(a) or (2)(a) was less than
15 eighteen years of age at the time the violation was allegedly
16 committed, that person shall not be prosecuted under this
17 section, and shall be subject to the safe harbor provisions of
18 chapter . Exemption from prosecution under this section
19 shall not apply to patrons of prostitution or persons who
20 procure or solicit patrons for prostitution.

21 [~~8~~] (9) For purposes of this section:



1 "Area" means any zone within a county that is defined with
2 specific boundaries and designated as a zone of significant
3 prostitution by this section or a county ordinance.

4 "Public property" includes any street, highway, road,
5 sidewalk, alley, lane, bridge, parking lot, park, or other
6 property owned or under the jurisdiction of any governmental
7 entity or otherwise open to the public.

8 "Sexual conduct" has the same meaning as in section
9 712-1200(2).

10 "Waikiki" means that area of Oahu bounded by the Ala Wai
11 canal, the ocean, and Kapahulu avenue.

12 [~~9~~] (10) This section shall apply to all counties;
13 provided that if a county enacts an ordinance to regulate street
14 solicitation for prostitution, other than an ordinance
15 designating an area as a zone of significant prostitution-
16 related activity, the county ordinance shall supersede this
17 section and no person shall be convicted under this section in
18 that county."

19 SECTION 6. This Act does not affect rights and duties that
20 matured, penalties that were incurred, and proceedings that were
21 begun before its effective date.



1 SECTION 7. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

3 SECTION 8. This Act shall take effect on January 7, 2059.



Report Title:

Minors; Prostitution; Family Court; Penal Code

Description:

Establishes a new chapter for the safe harbor of sexually exploited children. Expands the scope of the domestic violence and sexual assault special fund annual report to the legislature. Establishes that persons who are under eighteen and suspected of or charged with certain offenses of prostitution shall not be prosecuted. Effective January 7, 2019. (SB2579 HD2)

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